

(1987) 11 MAD CK 0023

In the Madras High Court

Case No : Writ Appeal No. 1202 of 1986

Tamil Nadu State Housing Board, Madras

APPELLANT

Vs

Shanmugha Sundara Nadar and Others

RESPONDENT

Date of Decision : 17-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 12, 4, 4(1), 54, 6

Citation : AIR 1989 Mad 20 : (1987) 2 MLJ 170

Hon'ble Judges : M.N. Chandurkar, C.J.; Srinivasan, J

Bench : Division Bench

Advocate : V.R. Raja Sekaran, for K. Doraisami, R. Balasubramaniam and V.N. Mohanraj, for the Appellant; P.S. Raman, for R. Parthasarathy, Govt. Pleader and M.S. Sampathkumar, for the Respondent

Final Decision : Allowed

Judgement

M.N. Chandurkar, C.J.—The main question which really arises in this appeal does not relate so much to the validity or otherwise of the land

acquisition proceedings, but to the basic question with regard to the exercise of discretion under Article 226 of the Constitution of India in respect

of land acquisition proceedings which were commenced by notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act), dt. 8-

5-1975, which were really substantially challenged by an amendment to the original writ petition some time in the year 1986, that is, almost after eleven years.

2. The notification u/s 4 of the Act relating to 42.19 acres of land belonging to the original petitioner, present respondent 1, hereinafter referred to

as the petitioner, was issued on 8-5-1975. The public purpose stated in the notification was the implementation of housing schemes to meet the

demand made by various sectors of the population under Kalaingar Karunanidhi Further Extension Scheme. An enquiry was made u/s 5A of the

Act, but that was only with reference to 28.42 acres of land because at the instance of the petitioner 13.77 acres were exempted from acquisition.

After the enquiry u/s 5A of the Act was completed, a notification u/s 6 of the Act came to be made on 9-6-1978. Proceedings for determination of

compensation were then commenced and an award was passed on 30-4-1983 in respect of compensation payable for 24.31 acres. A separate

award with regard to the remaining .4.11 acres was passed on 25-9-1986. In Feb., 1984, the petitioner filed a petition under Article 226 of the

Constitution in which he prayed for a writ of certiorari quashing the land acquisition proceedings culminating in Award No. 8 of 1983 dt. 30-4-

1983. Later on, an amendment in the prayer clause was sought in M.W.P. No. 11996 of 1986 and a specific prayer with regard to the quashing of

the notification u/s 4(1) of the Act and Section 6 of the Act and Award No. 8 of 1983 in respect of the petitioner's land bearing S.No. 127

measuring 28.42 acres in Maduravoyal village, Chengalpattu Dt., was made. This prayer was allowed. The main ground on which the proceedings

under the Land Acquisition Act were challenged was that there was no compliance with the latter part of Section 4(1) of the Act which requires a

public notice of the notification u/s 4(1) of the Act to be given in convenient places in the locality in which the land is situate. It appears that before

the learned Judge the records were produced. The claim of the petitioner was contested both by the State Government and the Housing Board. A

counter was filed by both the contesting respondents and they denied that there was no compliance with the provisions of Section 4(1) of the Act.

The learned Judge went through the records and he took the view that a piece of paper bearing the date 31-7-1975 which was on the record and

which purported to be a certificate by the village munsif that the material was published at prominent places in the village did not give any indication

as to what was the material that was published and the learned Government Pleader, according to the learned Judge, was not in a position to

improve the matter by pointing out to any relevant record. The records, according to the learned Judge, did not make out a case of compliance

with the latter part of Section 4(1) of the Act. The learned Judge has found that Section 4(1) read with Rule 1 of the Rules with regard to local

publication required publication to be done contemporaneously, but that local publication is stated to have been done on 31-7-1975. Even with

regard to this date, the learned Judge felt that the material on record did not bring conviction to the mind of the Court that there was compliance

with the requirements of the statutory provisions. Reliance was placed on the decision of the Supreme Court in Collector (District Magistrate)

Allahabad and Another Vs. Raja Ram Jaiswal, in which it was held that compliance with the provisions of Section 4(1) of the Act were mandatory

and merely because the person interested in the land had made his objections u/s 5A of the Act, he could not be prevented from raising the

objection with regard to the non-compliance of Section 4(1) of the Act. The learned Judge held that there was non-compliance with the mandatory

provision of Section 4(1) of the Act. With regard to the delay, the learned Judge, relying on a decision of this Court in Nandakumar v. State of

Tamil Nadu 1986 WLR 164 held that the writ petition could not be dismissed on the ground of delay. Accordingly, the writ petition was allowed

and as per the amended prayer the notifications under Ss. 4 and 6 were quashed as well as the award also was quashed.

3. This appeal is now filed by the Tamil Nadu State Housing Board. We are informed by the learned Government Pleader that there is another

appeal which has been filed by the State but it could not be numbered as there was some delay in filing the appeal. It is contended by the learned

counsel for the Housing Board, and he is supported by the learned Government Pleader who is appearing for the State, respondents 2 and 3, that

the learned Judge was in error in quashing the notifications under Ss. 4 and 6 of the Act as well as the Award at this distance of time, when

possession has already been taken and in a part of the area even foundation has been laid. The learned counsel contended that there was nothing

suspicious in the record and that the endorsement of the village officer should be treated as sufficient indication of the fact that the substance of the

notification u/s 4(1) of the Act was published. It is argued that the ratio of the decision of the Supreme Court in Collector (District Magistrate)

Allahabad and Another Vs. Raja Ram Jaiswal, and the decision of this Court in Nandakumar's case, 1986 WLR 164 cannot be taken as laying

down a bald proposition of law that whatever be the length of time after which the proceedings under Sections 4 and 6 are challenged, those

proceedings must be entertained and notifications quashed irrespective of the prejudice that may have been caused to the State or the Housing

Board by the delay in challenging the land acquisition proceedings.

4. Mr. Raman, on behalf of the petitioner, has vehemently contended that the petition could not be thrown out on the ground of delay and laches

and once it is established that there is a breach of the mandatory provision of Section 4(1) of the Act, then, according to the learned counsel, the

case falls squarely within the ratio of the decision in Nanda kumar's case, 1986 WLR 164 (Mad). On merits also, the learned counsel contended

that there is no evidence to show that Section 4(1) has been complied with. Now, it is necessary to bear in mind the fact that the land in the instant

case is being acquired for the purpose of providing housing facilities to a large number of people. The notification u/s 4(1) of the Act is dt. 8-5-

1975 and is now more than 121/2 years old. The notification u/s 6 is dt. 9-6-1978. The award was passed on 30th April, 1983. One fact which is

apparent on the record is that the petitioner has allowed the proceedings with regard to the acquisition and determination of compensation to go on

for a period of 8 years till they culminated, in the award for compensation on 30-4-1983. Challenging the award in a proceeding under Article 226

of the, Constitution is not either normal or usual unless the authority which is making an enquiry into the amount of compensation has acted in such

a manner that an opportunity to the claimant to put forward his case has been denied or if the proceedings were sought to be carried on in gross

violation of the principles of natural justice. The normal mode of challenging the award is by a reference u/s 18 of the Act and where a claimant is

dissatisfied with the quantum of compensation he can take recourse to this normal procedure. It was therefore, not necessary for the claimant to

wait till the award proceedings were completed and an award was passed if he really wanted to challenge the notifications under Sections 4 and 6

of the Land Acquisition Act. If there was non-compliance of the provision of Section 4 of the Act, he should have really challenged the land

acquisition proceedings even before the declaration u/s 6 of the Act was made if he had knowledge of the proceedings consequent upon the

notification u/s 4 of the Act. This was the course adopted by the claimant in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram

Jaiswal, where the challenge to acquisition proceedings on the ground of non-compliance with the mandatory provision of Section 4 of the Act was made, even before the declaration u/s 6 was made. That decision cannot be of assistance to the petitioner because the question of non-compliance with the provision of Section 4 of the Act could have been gone into only if the petitioner had approached this Court expeditiously. Though in a given case if a claimant or owner of land approaches the Court expeditiously immediately after Section 6 declaration has been issued, it may be permissible for him to challenge the notification u/s 4 of the Act, also, that in our view would not be permissible in the instant case as the petitioner is guilty of unexplained delay and laches.

5. Now, it is undoubtedly true, and ill cannot be disputed, that compliance with the latter part of Section 4 of the Act is a mandatory requirement which must be followed before proceedings for acquisition can further go on. A diligent owner of land who wants to challenge the proceedings following the notification u/s 4 of the Act must therefore be careful to ascertain whether the mandatory requirements of Section 4 have been complied with. He cannot be permitted to allow the proceedings to go on, have the enquiry completed, allow the notification u/s 6 to be made, allow the proceedings for determination of compensation also to go on and an award to be made and then come to this Court to set the whole clock back by 10 years without any valid explanation. We are conscious of the fact that a delay in approaching this Court under Article 226 of the Constitution need not automatically be fatal in every case. But, it is also equally well established that having regard to the nature of the discretionary jurisdiction which the High Court exercises under Article 226 of the Constitution of India, to serve the ends of justice there is a bounden duty on the part of the litigant or the claimant to explain why he could not have challenged the notification u/s 4 or u/s 6 earlier. Though strictly speaking there is no limitation fixed for filing a writ petition under Article 226 of the Constitution, one of the well established principles governing the exercise of jurisdiction under Article 226 of the Constitution, is that where delay or laches on the part of the petitioner has prejudiced the other side, the Court will not interfere under Article 226 of the Constitution. It is not as if the Court is duty bound to interfere in each case and it is perfectly

permissible for the High Court under Article 226 of the Constitution to refuse to interfere in a given case where the conduct of the litigant shows

that he has himself stood by a certain procedure and has not made any grievance of violation of a statutory provision at the earliest point of time.

6. We may usefully refer to the decision of the Supreme Court in *Durga Prashad Vs. Chief Controller of Imports and Exports*, in which the

Supreme COURT reiterated the view of the Constitution Bench in *Smt. Narayani Debi Khaitan v. State of Bihar* (Civil Appeal No. 140 of 1964,

dt. 22-9-64) (reported in 1964 SC (Notes) 259). In *Smt. Narayani Debi Khaitan*'s case the Supreme Court had observed as follows:

"It is well settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a

citizen moves the High Court under Article 226 and contends that his fundamental rights have been contravened by any executive action, the High

Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant

circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the

petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party

moving the High Court under Article 226 for a writ, is, in substance, claiming a relief which under the law of limitation was barred at the time when

the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when

the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches.

That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too

discretion must be exercised judiciously and reasonably.

After referring to the above quoted observations, the Supreme Court positively ruled that even in the case of alleged breach of fundamental rights

the matter relating to interference under Article 226 of the Constitution must be left to the discretion of the High Court. It is therefore clear that

interference under Article 226 of the Constitution is not a matter of course and if a person moves the Court after a considerable delay and is guilty

of laches, the Court will be justified in not interfering with the proceedings which the petitioner has allowed to go on and approaches the Court after a considerable length of time.

7. We may also refer to the decision of the Supreme Court in Hari Singh and Others Vs. State of U.P. and Others, , which arose out of a writ

petition filed in the High Court challenging the validity of a notification u/s 4 read with Section 17(4) of the Act after 21/2 years and the Supreme

Court held that such a petition is liable to be dismissed. The writ petition filed in that case Was in July, 1982 questioning the notification issued in

Jan., 1980 that is, after a delay of 21/2 years. The contention raised there was that the petitioners did not know anything about the notification

which had been published in the gazette till they came to know of the notices issued u/s 9(3) of the Act, but they had not pleaded that there was no

publication in the locality of the public notice of the substance of the notification as required by Section 4(1) of the Act The Supreme Court pointed

out that "It should be presumed that the official acts would have been performed duly as required by law."

Another circumstance which was taken into account by the Supreme Court was that a large number of persons, who own the remaining plots have

not challenged the acquisition proceedings. While dismissing the appeal against the decision of the High Court dismissing the writ petition, the

Supreme Court observed as follows :

"Moreover in a small place like Kheragarh" where these plots are situate the acquisition of these lands would be the talk of the town in a short

while and it is difficult to believe that the appellants who are residents of that place would not have known till July, 1982 that the impugned

notification had been published in 1980. Any interference in this case filed after two and a half years with the acquisition proceedings is likely to

cause serious public prejudice. This appeal should, therefore, fail on the ground of delay atone (underlining is ours).*

It may be pointed out that in the decision cited above, even though the contention raised was that the petitioners had come to know of the

notification filed after the notification u/s 4(1) was issued, the delay was considered to be fatal. The instant case, in our view, becomes worse,

having regard to the facts that a notice u/s 5A was admittedly served on the

petitioner, he took part in the inquiry u/s 5A, thereafter declaration u/s 6 was issued, and two years thereafter an award was passed. By the impugned notification the lands of other persons were also acquired. The present case, in our view, is squarely covered by the ratio of the Supreme Court decision in Hari Singh and Others Vs. State of U.P. and Others, .

With regard to the facts of the case, the view which we are inclined to take is that if the petitioner had challenged the provision following the notification u/s 4 of the Act in time, two consequences would have followed. Firstly, either the Collector or the State Government would have produced the necessary material to prove that there was publication of the substance of the notification as required by law or if the defect in the procedure did exist it could have been cured by making a proper publication before the proceedings for acquisition were continued further. The affidavits of the persons who have attested the endorsement made by the village officer could have been produced to show what was the material published. The memory of the attesting witnesses would have been fresh so that it would have been easier to meet the challenge of non-compliance with the mandatory provisions of Section 4(1) of the Act. There is on record an endorsement made by the village officer which says that the matter in the "copy" (vernacular omitted -- Ed.) has been published. The learned Judge undoubtedly is right when he says that there is no indication as to what was the copy which was published. While it may not be possible to find fault with those observations that would not necessarily lead to the conclusion that what was published was not the notification u/s 4(1) or the substance of the notification, but something else. If the publication was in connection with the land acquisition proceedings, the only publication possible in due course would be the substance of the notification u/s 4(1) of the Act. The State Housing Board was entitled to show by evidence aliunde as to what was the material published and if this would have been put in issue at the earliest opportunity it would have been possible for the State Government or the Collector to produce the necessary material in the writ petition. To permit such a challenge, which cannot be determined without reference to the facts which have transpired in June, 1975, to be raised in 1984 or 1985 would be really placing a premium on the laches and want of diligence on the part of the petitioner. In our view, the learned

Judge was in error in entertaining the challenge to the proceedings u/s 4 of "the Act after, a lapse of several years. There may have arisen a doubt

in the mind of the learned Judge about the non-compliance with the requirement of Section 4(1) of the Act but at the same time it should have been

appreciated that this doubt could have been cleared more effectively if it was raised much earlier. The benefit of this delay cannot certainly go to

the petitioner who allowed the proceedings to go on and stood by these proceedings.

8. It appears to us that the nature of the challenge which was made at the hearing of the writ petition by amendment was consequent upon a

decision of this Court in Nanda Kumar's case 1986 WLR 164. Having read the decision of the Division Bench in Nanda Kumar's case we are

however inclined to take the view that the decision in that case must be restricted to the facts of that case. The notification u/s 4 in that case was

issued on 7th June, 1978. The enquiry u/s 5A was completed and declaration u/s 6 of the Act was issued on 6th June, 1981. The writ petitions

seem to have been filed some time in 1983. The learned single Judge quashed the proceedings. The State therefore, filed the appeal. One of the

contentions raised in the appeal was that the petitioners had come to this Court belatedly in that they filed the writ petitions only in 1983 while the

declaration u/s 6 of the Act was made on 6-1-1981 and this Court should not interfere with such belated petitions. It appears, however, that in that

case no counter-affidavit was filed on behalf of the State in the main writ petition and the Bench took the view that if they had raised this averment

with regard to delay, the writ petitioners would have had an opportunity to explain as to why they could not approach the Court earlier. Therefore,

the Bench did not permit the Additional Government Pleader to raise the question of delay. The Division Bench then went on to observe that the

Supreme Court had held that both the publication of the notification in the gazette and the local notice are mandatory and then observed "We could

not dismiss the petition merely on the ground of laches". An additional reason for not dismissing the petition given was that the declaration u/s 6 of

the Act and the subsequent proceedings had already been quashed by the learned single Judge and the Government had not filed any appeal and

that order had become final The Division Bench therefore observed:

We, therefore, could not dispose of the writ appeals on the ground of delay in approaching the Court in filing the writ petition". These observations will therefore show that the decision not to dismiss the writ petition on the ground of delay was reached on the special facts of that case. The observation in para 13 cannot be treated as laying down that whatever may be the interval of time between the notification u/s 4 of the Act and the date of filing of the writ petition or whatever may be the conduct of the petitioner and though it may disclose want of diligence and laches and delay, the Court must in all cases, whenever the defect of non-compliance of Section 4 of the Act is brought to the notice of the Court necessarily quash the land acquisition proceedings. In our view the proper occasion to raise a challenge to the invalidity of the proceedings under the Land Acquisition Act on the ground that the provisions of Section 4 have not been complied with is before the proceedings of the enquiry u/s 5A of the Act are completed and declaration u/s 6 is made. In such a case, if the defect is found that defect can be remedied and the proceedings can be restarted.

9. We are not unmindful of the fact that Section 4(1) of the Act prescribes a mandatory requirement. But we are dealing with a case, where, as we have already pointed out proceedings which have been going on for the last 12 years, have culminated in an award and the Housing Board claims to have taken possession though by an interim order of this Court it was directed that the status quo should be maintained, which meant that if the Housing Board was in possession they would continue to be in possession, if the owner was in possession the owner would continue to be in possession. But the fact remains that the acquisition is for providing Housing facilities to meet the ever-rising demand for houses. To put the whole clock back at this distance of time is sure to result in prejudice to the acquiring body and the State Government. It will therefore not be a proper exercise of discretion under Article 226 of the Constitution to quash land acquisition proceedings and the award. We are not therefore inclined to sustain the order of the learned Judge.

10. Accordingly, the appeal is allowed, the order of the learned Judge is set aside and the writ petition is dismissed. There will be no order as to costs both in the appeal as also in the writ petition.